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THE TRANSITION FROM DUTCH TO ENGLISH RULE IN NEW YORK

A STUDY IN POLITICAL IMITATION

IN the development of political institutions, imitation plays a large part. What appears a successful or admirable political principle among one people, may be taken wholly or partially into the life of another race, and there under new conditions give rise to further political variations. The study of this process of imitation is always interesting, but, unfortunately, it has its dangers. No better illustration of the temptations which befall the student of political imitation could be given than the recent emphasis which has been placed upon the Dutch influence in American history. Broad and hasty generalizations have been made from analogies, in which the similarities may have been conscious or wholly accidental. *Post hoc ergo propter hoc* is the favorite argument of this class of thinkers. But if the question of the quantitative influence of Dutch upon American institutions is ever to be answered, it must be based upon something better than analogies.

Fortunately we have an opportunity to study the two races side by side, in colonial New York ; and there, if anywhere, should we be able to compare the political practice of the two nations, and determine the results of the contact of one with the other. Here are seen first the Dutch ruling over subject English towns, and then the English assuming control over all New Netherland ; and in their mutual relations or political expressions, now so fully illumined by the publications of the New York state government, one can find illustrations of their political activity and ideals.

An attempt has already been made¹ to compare the political practice of the Dutch and English towns under the New Amsterdam jurisdiction. In 1664 the English obtained the Dutch territories, and naturally this year, beginning the Anglicizing process, forms a logical view-point for a second glance at the Dutch and English institutions.

On March 12, 1664, King Charles II. granted to his brother James, Duke of York and Albany, a part of Maine, all of Long Island,

¹ AMERICAN HISTORICAL REVIEW, VI. 1-18, *supra*.

Martha's Vineyard and Nantucket, "and all the land from the west side of Connecticutt to the east side of Delaware Bay." By this grant the King not only disregarded the rights of the friendly nation of the Dutch, but he also ignored the charters of Massachusetts and Connecticut, and previous grants to individuals in Maine and on Long Island. No provision was made, either, for the recognition of the property rights of Englishmen or Dutchmen already settled upon the territory; and in political matters the Duke was to be absolute ruler, unrestrained by any popular participation in government:

"We do grant unto our dearest brother James, his heires deputies agents commissioners and assignes by these presents full and absolute power and authority to correct punish pardon governe and rule all such the subjects of us . . . that shall or doe at any time hereafter inhabite within the same according to such lawes orders ordinances direccons and instruments as by our said dearest brother or his assignes shall be established . . . soe alwayes as the said statutes be not contrary to but as neare as conveniently may be agreeable to the lawes statutes and government of this our realme of England . . ."

The Duke had the further right to confine the privilege of trade with his lands to such persons as he might direct. This charter, the most despotic ever granted for the government of an English colony on the American continent, harmonized well with the political theories and later practice of the Duke of York. There was no protection for the property or trade of the existing settlers; their land-titles were not secure; their religious establishments received no guarantee, and no consideration whatever was given to them in political affairs.

The arrival of an English fleet in New York harbor, and the capitulation of New Amsterdam on September 6, 1664, were the first steps in the assumption of control by the English. The actual fact of conquest was obtained through the military superiority of the English, and, as in all conquests, it took some time for the physical superiority of the conquerors to be established in legal forms; the military power was not immediately translated into civil terms. In the settlements on the Hudson and Delaware rivers several years elapsed before the ultimate governing powers were taken from the hands of the military officers and placed in the care of civil officials; and in the meanwhile, it is interesting to note the progressive limitations which were placed, voluntarily or involuntarily, upon the arbitrary actions of the Duke of York or of his officials.

Naturally the first of these checks is to be found in the terms of the capitulation of the Dutch, of which there were three sets of articles, drawn up respectively for New Amsterdam,¹ for the upper

¹ *Documents Relating to the Colonial History of New York*, II. 250-253. Quoted hereafter as *N. Y. Col. Doc.*

Hudson settlements,¹ and for the Delaware territories.² Although differing in minor details, the features of these sets of articles were closely similar. All persons recognizing the authority of the King of England were to be accepted as denizens in the English sense, and guaranteed the enjoyment of their lands, houses and goods. Permission was given to the Dutch inhabitants to leave the country within a limited time and take their property with them; if they remained in the colony, the Dutch rules of inheritance were to be maintained, and liberty of conscience and worship established. In political affairs, no sudden change in the local government was contemplated. In New Amsterdam it was agreed that

“All inferior civil officers and magistrates shall continue as now they are (if they please) till the customary time of new elections, and then new ones to be chosen by themselves, provided that such new chosen magistrates shall take the oath of allegiance to his majesty of England before they enter upon their office.”

On the Delaware it was provided that

“The Present Magistrates shall be continued in their offices and Jurisdicōns to exercise their Civill power as formerly.

“The Schoute, the Burgomasters, Sheriffe, and other inferiour Magistrates shall use and exercise their Customary Power in adm^con [administration] of Justice within their Precincts for Six Moneths or untill his Maj^{ties} pleasure is further known.”

The conquering English thus recognized and continued the political organization, the religious principles, the property rights, and the judicial procedure of the Dutch. But this was considered only a temporary settlement, and while property rights and religious freedom might be made permanent, it was the evident intention of the English to change the political system. On Long Island there was a large English population, which had been under the Connecticut or the New Netherland jurisdiction, and which could be governed only by English methods; while New Amsterdam and the Dutch settlements on the Hudson and Delaware rivers could not easily be changed from the Dutch practices. Thus the commander Nicholls was forced to adapt his political organization to the character of the predominating race in the several sections of his lands, and yet each was influenced by the other; the establishment of English political ideas on Long Island was retarded by the Dutch principles which Nicholls had learned, and the Anglicizing process among the Dutch was hastened by the demands of the Long Island English.

¹ *N. Y. Col. Doc.*, XIV. 559; Brodhead, *History of the State of New York*, II 46-47.

² *N. Y. Col. Doc.*, III. 71-73; Hazard, *Annals of Pennsylvania*, 362-364.

The Dutch method of governing New Netherland harmonized well with the despotic powers given to the Duke of York. Before the conquest the Dutch Director and Council, usually resident in New Amsterdam, had been the supreme political power. They had passed the laws, they had levied and collected duties and taxes, they had formed the highest court of the colony, they had drafted and controlled the military forces, they had appointed local officials, usually from a double nomination by the incumbent officers—in short they were the absolute ruling body of New Netherland, and among them, in most cases, the director was an autocrat, whose word was law. Several partially representative boards or assemblies had, indeed, existed in New Netherland, but they had never formed an integral part of the government; and during the ten years from 1653 to 1663 there was no meeting whatever of a popular representative body. The Dutch directors thus allowed almost no popular legislative action, and with their councils they assumed all legislative, executive and judicial powers. The authorities thus exercised by the director and council closely paralleled those given to the Duke of York, and by him passed on by commission¹ to his deputy-governor, Colonel Richard Nicholls. To no other proprietor had such absolute political powers been granted, and in no other part of the continent from the Carolinas to Maine was there so little popular political liberty as was to be found in the Dutch New Netherland. Hence the new autocratic English government had the experience of the old despotic West India Company as its guide, and the policy of Governor Nicholls was made possible not only by his own military force, but also by the pre-existing political practice of the Dutch.

Following, therefore, the words of his commission, and copying also the Dutch organization, Nicholls reserved to himself and his councillors the general administration of the province. He had, indeed, promised the English inhabitants of Long Island that they should have privileges at least equal to, and perhaps greater than those of the New England colonies;² but this promise was not carried out in the sense in which it was interpreted by the Long Islanders. The governor erected Long Island, Staten Island and the Bronx peninsula into a county, called Yorkshire, and divided it into three judicial ridings; and the justices of the peace of this county were given the right to attend once a year a general judicial body, called the court of assizes. This court was composed of the

¹ Brodhead, *History of the State of New York*, Vol. II., Appendix, p. 653.

² *Southold Town Records*, I. 357; *Report of N. Y. State Historian*, 1897, 240-242; *N. Y. Col. Doc.*, XIV. 555-556.

governor, his councillors and the justices; and in addition to its judicial powers, it also had the right, with the governor's consent, to pass laws. This latter feature did not, however, give to the court the nature of a popular assembly, for the justices were appointed by the governor and retained their offices during his pleasure;¹ and in some cases the governor changed the laws without waiting for the consent of the court.² Thus this body, composed of the governor's appointees, could not be truly representative of the people, when their positions were dependent upon the will of the governor.³ Finally it must be noted that the legislation of this court was not enforced throughout all the territories of the Duke, but only in Yorkshire. New Amsterdam, as we shall see, had its government prescribed for it, by Nicholls and his council; while, for ten years or more, the settlements on the Delaware and the upper Hudson rivers were governed solely by the instructions sent to the military commanders at those places.

With the continuance of the English authority, and the influx of English office-holders, traders and settlers, the process of Anglicization advanced, gradually introducing one or another of the features of English political practice, but maintaining, too, part of the Dutch customs untouched. In New Amsterdam the government was changed from that of Dutch "burgomasters and schepens" to English "mayor and aldermen and sheriff;" on Long Island a code of laws, "the Duke's Laws," was drawn up by Nicholls, establishing many English customs in Yorkshire; on the Delaware and Hudson rivers some English features were introduced; and at last, after almost twenty years had passed, and much popular opposition to the Duke's government had arisen, the noble proprietor granted his colonists the privilege of electing delegates to a representative assembly. The subject thus naturally falls under two heads, the first dealing with the changes in local government, and the second with the adaptation of the English idea of political representation to the territories of the Duke of York. The present paper will discuss the first topic only, and attempt to point out the local governmental policy.⁴

As New Amsterdam, now called New York, was the seat of government of the province, and the city officials were nearest of all

¹ *N. Y. Colonial Laws*, I. 55.

² *Ibid.*, 70, 88.

³ Yet the Duke of York maintained that the court was a satisfactory representative body. *N. Y. Col. Doc.*, III. 218.

⁴ No mention will be made of the institutions developing in the tract of land between the Hudson and Delaware rivers—New Jersey—because under the government of its proprietors it was almost independent of New York.

local officers to the person of the governor, it will be best to glance first at the conditions therein. The articles of capitulation, already quoted, confirmed the civil magistrates in their positions, and granted them the right of making new elections at the close of their terms. There was, therefore, no compulsory change in the personnel of the city government, but several changes took place voluntarily on the part of the incumbents; one of the city magistrates left for Europe,¹ another resigned his position,² and the schout of the neighboring hamlet of Harlem refused to perform the duties of his office.³ No advantage appears to have been taken by Nicholls of these opportunities to place Englishmen in office; but the vacancies were filled, if at all, in the old Dutch manner. In the meantime the local officers, schout, burgomasters and schepens, continued to hold their courts, appoint arbitrators, and adopt local measures; and no change appears in their manner of holding meetings or in the extent of their jurisdiction. In February, 1665, the terms of the officers expired, and in their customary way, they presented in nomination to the governor the names of persons to fill the offices for the ensuing year; whom he, following the habit of the Dutch directors, confirmed.⁴ Thus there appears no formal change in the government of the city.

Yet Nicholls was making his influence felt. In October, 1664, he had required both city magistrates and inhabitants to take an oath to obey all commands issued by the King of England, by the Duke of York, or by any of his governors or officers.⁵ And early in the next spring he ordered the city to find quarters for one hundred soldiers; but the burghers refused to take them into their houses, and after a long controversy, the city authorities yielded so far that they ordered a tax for the support of the soldiers.⁶

Perhaps as a result of this quarrel over the quartering of soldiers, or it may be as the outcome of a policy already adopted by Nicholls, in June 1665 the old Dutch forms were superseded by the titles of an English corporation, and the Dutch officers were set aside to make room for Englishmen. On June 12, Nicholls appeared in the

¹ *Records of New Amsterdam*, V. 160.

² *Ibid.*, 166.

³ Riker, *History of Harlem*, 239-240.

⁴ *Records of New Amsterdam*, V. 183-184. The new officers were all Dutchmen.

⁵ *Records of New Amsterdam*, V. 142 ff.; *N. Y. Col. Doc.*, III. 74-77. The oath is as follows: "I swear by the name of Almighty God, that I will bee a true subject, to the King of Great Brittain, and will obey all such commands, as I shall receive from His Majestie, His Royall Highnesse James Duke of Yorke, and such Governors and Officers, as from time to time are appointed over me, by His authority, and none other, whilst I live in any of his Majties territoryes; So helpe me God."

⁶ *Records of New Amsterdam*, V. 208-220.

Dutch city court with several papers which outlined the form and named the persons of the new government.¹ By these documents, the governor abolished the offices of schout, burgomaster and schepen, and in place thereof established a corporation governed by a mayor, five aldermen and a sheriff, "according to the custome of England in other his Ma^{ties} Corpora^{cons}." Of these seven new officers, the mayor, Thomas Willett, and two of the aldermen were English, while the others were Dutch. Nicholls further extended this new municipal government throughout all Manhattan Island, and gave the new corporation

" . . . full power and authoritye to Rule and Governe as well all the Inhabitants of this Corpora^{con}, as any Strangers, according to the Generall Lawes of this Governm^t and such peculiar Lawes as are, or shall be thought convenient and necessary for the good and Welfare of this his Ma^{ties} Corpora^{con}; as also to appoint such under officers, as they shall judge necessary for the orderly execution of Justice. . . "

Two days later Nicholls again entered the Dutch municipal court, this time accompanied, as the records say, by "his Hon^r M^r Thomas Willet" and the new officers. One courageous burgomaster objected to the change as contrary to the promise made in the articles of capitulation, but Nicholls speciously argued that he had granted all that the articles provided; for had he not allowed a new election when the terms of the old officers expired in February last? This was all he had promised.²

The new officers entered upon their duties on June 15, 1665: on which day they elected a city constable, made provision for the fencing of the church-yard where hogs had been rooting, and continued in office the Dutch secretary and town sergeants.³ The real changes made by these innovations were more nominal and personal than administrative; in place of the Dutch titles and persons, Englishmen and English corporation titles were substituted; but there was little change in the duties of the officers. The English officers passed local ordinances as the Dutch had done; they elected minor officials, and particularly they established an interesting system of selection from double nominations made by the people of Harlem and the neighboring "farmers;"⁴ they held the municipal courts, tried cases and appointed arbitrators. In all these matters they followed the Dutch precedents, in some cases even extending the Dutch

¹ *Documentary History of New York*, I. 602-604; *Records of New Amsterdam*, V. 248-251.

² See *ante*, p. 695.

³ *Records of New Amsterdam*, V. 252.

⁴ *Ibid.*, V. 345; VI. 4, 15, 92, 150, 184, 207, 296, 361, 374.

methods to new subjects, as when the purely Dutch double-nomination principle was extended to fire-wardens, overseers of highways, militia officers, and even the public draymen.¹ The incumbents of all these offices were given the power, in accordance with the Dutch custom, of nominating a double number of candidates to fill their positions for the ensuing year ; and the "election," as it was called, was made by the city authorities from the names thus submitted to them. But while accepting the Dutch practice in many things, the municipal court made one decided change toward English ideas. The old Dutch courts had determined cases either directly by the magistrates themselves, or indirectly by the appointment of arbitrators ;² but now within a fortnight of the change in government, the new court established the jury system by the appointment of twelve jurors, who determined both civil and criminal matters.³ Thus, although the jurors were chosen by the court, the grand old English custom of a trial by one's peers was confirmed to the inhabitants of the city.

In the new English municipal government, the only popular feature was this introduction of juries into the courts ; and beyond this, the English governor exercised more power over the appointment of the city officers than did the Dutch director. The latter had allowed the existing officers to nominate to him a double number of candidates, but Nicholls did not even allow this liberty ; for, when the one year's term of his first appointees had expired, new ones were placed in office without any nominations by people or magistrates.⁴ This continued for three years, until, in 1669, the mayor and aldermen asked the new governor, Lovelace, to select the new officers from a double nomination made by themselves.⁵ This modicum of political privileges was granted by the governor, and until the Dutch reoccupation the governor selected the city officials from such double nominations.⁶ Under the English, therefore, as under the Dutch, there was no popular participation in the city government ; and the magistrates appointed inferior officers, passed by-laws, tried petty cases, and admitted freemen.⁷ It was

¹ See references given in preceding note.

² The arbitrators were frequently chosen from among those who had held the office of schepen.

³ *Records of New Amsterdam*, V. 267, 279, etc. This jury system was discontinued by the Dutch during their reoccupation of New York in 1673-1674 ; but was again put in force by the English after their restoration ; *Records of New Amsterdam*, VII. *passim* ; *Report of State Historian*, 1897, 286-288.

⁴ *Records of New Amsterdam*, VI. 18.

⁵ *Ibid.*, VI. 88, 144, 200, 201.

⁶ *Ibid.*, 260, 332, 384.

⁷ *N. Y. Col. Doc.*, III. 337 ; *Penna. Archives*, second series, V. 689.

a combination of the worst type of English municipal corporation with the somewhat redeeming feature of the Dutch double-nomination system; it refused all popular suffrage, as did some of the English city corporations of the day; but the annual change of officers was at least an advance over the close corporations and life-tenure of these municipalities.

The city further retained the trade privileges and monopolies which had been granted to it in the Dutch days. No one could exercise any trade in the city or sell goods at retail unless he were a freeman of the city; only such freemen who had actually resided in the city for three years could trade up the Hudson River; no inhabitants dwelling up the river could trade abroad; no flour or biscuit for export could be manufactured outside of the city; and the city was the *staple* of the whole province, at which "all merchandize was Shipped and unloaden."¹

This form of government continued without material change, except for the fifteen months' occupation of the Dutch,² until the year 1683. In that year, the city officers petitioned the governor for a more democratic government. It was an opportune time for such a demand. Much popular opposition had been aroused to the Duke's rule and to the taxes laid by his officers; and on Long Island, riots, insubordination, and threats of secession from the Duke's government voiced the feeling of the people. Dongan, a newly arrived governor, had, according to his instructions, granted the people a representative assembly; and this assembly, in a charter of liberties, had attempted to give permanent form to the republican system.³ And now, but a few days after the assembly had passed this so-called charter, the city authorities asked for popular representation in their local government. The petition prayed that certain officers should be elected by the freemen of the city, and others appointed by the governor. The city was to be divided into six wards, in which the freemen were to elect yearly their own officers: aldermen, common councilmen, constable, overseers of the poor, assessors, scavengers, questmen, and "other officers usefull and necessary for the said Corporation and Ward."⁴ They asked that the mayor be appointed annually by the governor from among the six aldermen; that the recorder, sheriff, coroner and town clerk

¹ *Ibid.*

² It has not been thought necessary to discuss the period of Dutch occupation, from August, 1673, to November, 1674. The Dutch municipal titles were again adopted; Dutchmen were placed in office; but no great change in municipal functions occurred, and no change was made in the relations of city and governor.

³ *N. Y. Col. Laws*, I. 111-116.

⁴ *N. Y. Col. Doc.*, III. 338-339.

be appointed by the governor, and that a treasurer be appointed by the corporation officers.

Dongan, through fear or favor, granted most of these demands, and in October 1684 the first election under the new plan was held ; the six wards each electing one alderman and one common councilman and the governor selecting the mayor from a list of seven names which had been submitted to him.¹ But these privileges were not formally granted in a charter, and hence the mayor, in writing, in 1685, to King James in congratulation upon his accession and giving wishes for a prosperous reign, closes his letter with the hope that the Jerseys will be re-united with New York, and that the King will "Grant to this his Citty such privileges and Immunitys as may again make it flourish and encrease his Ma^{ty}'s revenue." ²

At last, by the charter of April 27, 1686, the desire of the city was granted.³ The form of government already instituted by Dongan was changed but little. The elective officers were the aldermen, assistants and petty constables. The mayor and sheriff were appointed annually by the governor ; the recorder, town clerk and clerk of the market were appointed during the will of the governor ; the high constable was appointed by the mayor, and the chamberlain was chosen yearly by the mayor, aldermen and assistants. The elective officers were to be "chosen by Majority of Voices of the Inhabitants of each Ward ;" a most vague provision which later needed legislative interpretation.⁴ The charter also confirmed to the city some of the old trade privileges, and the titles to certain lands, docks and ferries.

Dongan's charter was more democratic in appearance than in practice. Through his appointing power the governor had control of the more important city officials, and the ordinance power of the corporation was limited by the fact that its ordinances were to remain in force only for three months, unless confirmed by the governor and council. Thus the city officers, in writing to King James, in 1687, could well say, "The Govern^t of the whole Citty is altogether lodged in Yo^r Ma^{ty} and Gov^r, The Mayor, Recorder, Sherif, Town Clerk appointed by Yo^r Ma^{ty} or Governor, the rest are only

¹ Brodhead, II. 408.

² *N. Y. Col. Doc.*, III. 361.

³ *N. Y. Col. Laws*, I. 181-195.

⁴ The act of May 1, 1702 (*Col. Laws*, I. 490), defined more precisely the qualifications of the suffrage, but it was disapproved by the Queen. The Montgomery charter cleared up the ambiguity (*Col. Laws*, II. 575-639). But other difficulties arose and additional legislation was passed in 1771 (*Col. Laws*, V. 228), and 1774 (*Laws of N. Y.*, 1774-1775, p. 45).

servil Officers appointed by the people.”¹ This charter remained in force, without substantial change, until the American Revolution, Montgomery’s charter of 1730 making but slight alterations in the city government.

By the year 1686, therefore, the process of formally Anglicizing the municipal government was completed. The English municipal corporation of the seventeenth century, having some elective and some appointive officers, was made the model for the new-world city; and twenty-two years after the English conquest of New Netherland, New York City became, in outward political appearance at least, an English corporation. There still remained the Dutch blood, the Dutch customs, traditions and speech; but from the point of view of formal political organization, New York was now an English city.

Before the English conquest, political conditions on Long Island had been varied. There were three distinct groups of settlements, each developing political habits different from the others. The greater part of the island, extending from Oyster Bay eastward, had, since the treaty of 1650 between the English and the Dutch, been under the control of New Haven or Connecticut; and some of the towns had sent deputies to the General Court at Hartford. The laws and customs of New Haven or Connecticut were established in these towns, and politically, as well as geographically, they formed a part of New England. To the westward of Oyster Bay, and stretching in an irregular strip across the island, were the five English towns under the Dutch jurisdiction. These English settlements had been granted lands and charters of incorporation by Dutch directors, which gave them greater privileges than those enjoyed by the Dutch under the New Netherland government;² but did not leave them so free in local matters as were the Connecticut towns. In the tumultuous years, 1663–1664, these towns had thrown off the authority of the Dutch, and had elected for themselves a President, one John Scott; and claimed to be independent both of New Netherland and of New England.³ Finally, in the extreme western part of the island were the five Dutch settlements,⁴ whose governments were modelled closely after the town-corporation system of Holland.

But a few weeks after the conquest, Nicholls, in the letter already quoted, had promised the English inhabitants of Long

¹ *N. Y. Col. Doc.*, III. 425.

² Stuyvesant says, “The Englishmen enjoy more privileges than the Exemptions of New Netherland grant to any Hollander.” *N. Y. Col. Doc.*, XIV. 233.

³ *N. Y. Col. Doc.*, XIV. 542, 544, 547–548, 551–552.

⁴ The five English towns were Newtown, Hempstead, Flushing, Gravesend and Jamaica; the five Dutch towns were Breucklen, Midwout, Amersfoort, New Utrecht and Bushwick.

Island certain political privileges. Naturally the Englishmen who had enjoyed self-government under Connecticut or New Netherland wished to have their rights confirmed by the new English authorities; and, on the other hand, Nicholls was most likely to take up, first of all, the establishment of proper political forms among his fellow-Englishmen. Hence it is not surprising that the first code of laws was limited to the county of Yorkshire, that is, to Long Island, the Bronx peninsula, and Staten Island.

In accordance with his earlier promise, therefore, Nicholls in February of 1665 wrote to the inhabitants of Long Island, reciting the past wrongs under which they had groaned, the "signall grace and honor" which the King had shown in reducing the neighboring foreign power, and his own determination, in discharge of his trust and duty, to call a general meeting at Hempstead, on the last day of February, 1665. The governor ordered that the assembly should consist of "Deputyes chosen by the major part of the freemen only, which is to be understood, of all Persons rated according to their Estates, whether English, or Dutch;" and recommended to the people that in the choice of their deputies they select "the most sober, able and discreet persons without partiality or faction, the fruit and benefitt whereof will return to themselves in a full and perfect settlement and composure of all controversyes, and the propacon of true Religion amongst us."¹

The directions of this letter were followed out, and on February 28, 1665, thirty-four deputies, from seventeen towns, assembled at Hempstead. With the exception of two delegates from Westchester, all the deputies represented Long Island towns, both Dutch and English towns sending delegates.² On the day following their meeting, the deputies acknowledged themselves to be within the limits of the patent of the Duke of York, and unanimously declared their submission to all laws which should be made by the Duke's authority.³ This declaration bound them to observe the code of laws upon which Nicholls had been at work, and which now he promulgated in their presence. This code, known as the "Duke's Laws," following the example of the New England codes, was arranged alphabetically according to subject-matter; and its provisions were drawn in very large measure from the laws of Massachusetts and New Haven, copies of which Nicholls had obtained.⁴ And yet, while he took some of the New England laws bodily, Nicholls' code shows some very significant changes and omissions;

¹ *N. Y. Col. Doc.*, XIV. 564.

² *Ibid.*, 565.

³ *Ibid.*, III. 91.

⁴ *N. Y. Col. Laws*, I. 7; Brodhead, II. 66.

alterations, indeed, which changed the essential features of the New England democratic system ; and changed materially the government of the English towns on Long Island, at the same time that they gave new laws to the Dutch towns.¹

If the Laws be grouped together according to subject-matter instead of the alphabetical arrangement, they will be found to contain a civil and criminal code, elaborate provisions concerning local government, and a general provincial organization of the courts and the militia. In all of these features there are numerous changes from the New England customs ; and in order to appreciate the force of the Dutch influence and of the political ideas of Nicholls, a short comparison of the three codes will be made. The changes which Nicholls introduced fall into three classes ; first, the omission of New England features ; second, the introduction of Dutch customs ; and third, the insertion of wholly new provisions.

Turning our attention to the New England features which were omitted from the Duke's Laws, the most noticeable one is the absence of any general provincial legislative assembly, in which the people are represented. Nicholls had promised privileges to the people at least as great as those of the New England colonies ; but now, although the towns demanded that taxation and representation should be united,² Nicholls made no provision whatever for an assembly. As the Laws are altogether silent upon the subject of general legislation, that power remained vested in the Duke's governor and his council, almost as fully as it had previously resided in the West India Company's director and council.³ The governor chose, indeed, to associate with himself in legislation the members of the court of assizes, but this did not answer the popular appeal for an

¹ The comparison which follows is based upon the New Haven printed code of 1656, the Massachusetts printed code of 1660, and the two copies of the Duke's Laws, known as the Easthampton and Roslyn copies. New Haven's laws were published in London, 1656, entitled, *New-Haven's Settling in New-England. And some Lawes for Government: Published for the Use of that Colony*; and have been reprinted in *New Haven Colonial Records, 1653-1665*, p. 571 ff. The Massachusetts code, printed at Cambridge, 1660, is entitled, *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts*. . . . The best edition of the Duke's Laws is that in Volume I. of the *Colonial Laws of New York*, which gives the Easthampton and Roslyn variations ; they may also be found in *New York Historical Society Collections*, I. 307, and in *Laws of the Province of Pennsylvania*, 1682-1700.

² Instructions to Southold deputies to the Hempstead meeting, given February 22, 1663. They are directed to ask " That there be not any Ratte, Levy or Charge, or money raised but what shall be with the consent of the major part of the deputies in a General Court or mettinge." *Southold Town Records*, I. 358-359.

³ See the demand of the town of Easthampton for an assembly, and the efforts to obtain concerted action on the part of the eastern towns of Long Island, *Easthampton Town Records*, I. 241.

assembly,¹ and reproduced very inadequately the strong representative system of England and New England.

In local legislation, a change was made which corresponded to the omission of the general assembly in provincial affairs. The Laws abolish the town-meeting as a part of the local administrative system, and in its place put an elective constable and board of overseers ;² who are given the power to pass local ordinances, enforce them and try cases arising under them. The provision of the Massachusetts code permitting towns to elect selectmen and thus relieving the town meeting of minor matters, is made compulsory in the Duke's Laws, and the constable and overseers are invested with the local administrative powers which the whole community exercised in New England. It is interesting to note with what a slight alteration in phraseology the change from the pure democracy to the representative system is made. The text of the three codes is as follows

Duke's Laws.

Massachusetts, 1660.

New Haven, 1656.

"Whereas in particular Townes many things do arise, which concerne onely themselves, and the well Ordering their Affairs, as the disposing, Planting, Building and the like, of their owne Lands and woods, granting of Lotts, Election of Officers, Assessing of Rates with many other matters of a prudentiall Nature, tending to the Peace and good Government of the Respective Townes the Constable by and with the Consent of five at least,

"Whereas Particular Townes have many things which concerne onely themselves, and the Ordering their own affaires, and disposing of business in their own Town. It is therefore Ordered, that the free-men of every town, with such others as are allowed, or the Major part of them, shall have power to dispose of their own Lands and woods, with all the Priviledges and appurinances of the said Townes, to grant Lots, and also to chuse their

"Whereas the Free men of every Town, or plantation, within this Jurisdiction, have in sundry particulars liberty to make Order among themselves, a about Fencing their Land, ordering or keeping their Cattell, or Swine, &c. as may best suite with their own conveniency ; It is by this Court Ordered That if any cattell,' etc. *New Haven Colonial Records*, 1653-1665, p. 604.

¹ In some cases Nicholls promulgated changes in the laws, and afterwards had these alterations ratified by the Court of Assizes ; *Report of State Historian of N. Y.*, 1896, p. 303. In 1675, after the Court of Assizes had been fully organized, it was attended by the governor, three councillors, three aldermen of New York City, four justices from each of the three ridings of Yorkshire, two from Albany, one from Schenectady, two from Esopus, and the sheriff from the Delaware ; making twenty-five in all. *Report of State Historian of N. Y.*, 1897, 387 ff.

² The term "town-meeting" occurs four times in the laws, but in each case it means the meeting of the constable and overseers, and not a meeting of the towns-people. In two of these cases, the court of assizes took pains to change the term to town-court. *N. Y. Col. Laws*, I. 80, 82. See also *Memorial History of the City of New York*, I. 316, 328.

of the Overseers for the time being, have power to Ordaine such or so many peculier Constitutions as are Necessary to the welfare and Improvement of their Towne; Provided they bee not of a Criminall Nature, And that the Penaltyes Exceed not Twenty Shillings for one Offence, and that they be not Repugnant to the publique Lawes; And if any Inhabitant shall neglect or refuse to observe them The Constable and Overseers shall have power to Levie such fines by distress." *N. Y. Col. Laws*, I. 63.

own Particular Officers, as Constables, Serveyors for the High-ways, and the like annually or otherwise as need Requires; And to make such Lawes and Constitutions as may Concerne the Welfare of their Town. Provided they be not of a Criminall, but of a prudentiall Nature, and that their penalties exceed not twenty shillings for one Offence, and that they be not Repugnant to the publick Lawes and Orders of the Country. . . .

"2. And every Township hath power to chuse yearly or for less time, a convenient number of fit men to order the planting and prudential affairs of their Townes according to instruction given to them in Writing, provided nothing be done by them, contrary to the Laws and orders of the Country. . . ."

Book of General Laws, 1660, p. 75.

Comparing Nicholls's code with the Massachusetts laws, the governor appears desirous to keep as many *words* of the original as possible, while in fact he was changing vitally the real principle of the New England town system.

One of the strongest features of the New England political systems was the matter of freemanship, which had been introduced into their practice by the corporate nature of their local and provincial governments. This fiction of freemanship, copied from the customs of English municipal and trading corporations, received a far wider application in the colonies than had been dreamed of in England. Through it the political and religious oligarchy of Massachusetts had been maintained; by it objectionable persons had been excluded from local and provincial affairs in Connecticut; and

in New Haven it was the mainstay of the theocracy. The exclusive nature of the freemanship in Massachusetts had led to a long contest with King Charles II. ; and Nicholls, whom we see in New York legislating for the Duke of York's province, was also associated by the King with three other commissioners to investigate the general conditions of the New England colonies and institute needed reforms. One of the principal subjects assigned to these commissioners was the extension of the suffrage and the abolition of exclusive freemanship.¹

Nicholls's instructions from the King and his personal knowledge of the principle respecting freemen in New England must have influenced him when framing his legislation ; for, although the term freeman occurs scores of times in the New England laws,² it is most sedulously erased from the Duke's Laws ; and even the allied subjects of residence and admission of inhabitants are omitted from the New York code. The Massachusetts and New Haven laws forbade a man's taking up residence in a town without the consent of the local officers or the town-meeting ; but this method of admission was in principle akin to the New England principle respecting freemen, and it, too, was ignored by Nicholls. In addition to fostering political and ecclesiastical intolerance, the New England freemanship, whether of province or town, was opposed to the powers granted by charter to the Duke of York.³ Finally, Nicholls had the New Netherland custom on his side, for Stuyvesant, five years before this, had said that the admission of new inhabitants was not a subject for local determination, but belonged to the central authority.⁴ Thus there appear ample reasons for the absence of the subject of freemanship ; Nicholls's own experience in New England, the royal instructions, the Duke's charter and Dutch custom were all opposed to the exclusiveness of the New England corporations ; and in this feature, as in some others, the innovations of the New York governor were steps toward greater freedom.

¹ See *N. Y. Col. Doc.*, III. 51-54, 57-63, 84, 110-113 ; *Records of Massachusetts*, IV. pt. II., pp. 129, 173-174, 186 ff., 200-211, 218 ff.

² The word *freeman* does occur once in the Laws, but in that case it has the meaning of *free man*, *N. Y. Col. Laws*, I. 36. The words *freeman* and *freemen* are used twenty-five times in the New Haven laws, and fifty-five times in the Massachusetts code.

³ By the Duke's charter he and his heirs are given power "to admit such and so many person and persons to trade and traffique unto and within the terrytoryes and islands aforesaid and into every and any part and parcell thereof and to have possesse and enjoy any lands or hereditaments in the parts and places aforesaid. . . ."

⁴ "None of the Townes of N. Netherlands are troubled with Inhabitance, the which doe not Lyke her or her Magistrates, beinge reserved that they doe not admitt any Inhabitance without approbation and acknowledgement of the Director Generall and Counsell . . . " *N. Y. Col. Doc.*, XIII. 211.

New England narrowness was avoided also in the treatment of the whole question of religion. The Duke's code imposed no religious qualifications upon voters or office-holders; and it omitted altogether the title "Heresy" which occupied such a prominent place in the New England laws. Instead of the religious uniformity to which the Puritans aspired, the new laws provided for religious toleration: "Nor shall any person be molested, fined or Imprisoned for differing in Judgment in matters of Religion who professes Christianity." Nicholls also pruned out of his models practically all the Puritanic and Sabbatarian legislation which they contained, and at the same time retained the popular election of ministers and the compulsory payment of tithes for church support.¹

If Nicholls advanced individual liberty by rejecting the religious system and the freeman-principle of New England, the same cannot be said of another omission. It would have been well for the colony if the governor could have introduced the educational system of New England; and yet, perhaps, this was impossible. Economic and racial differences existing in New York would have interfered with the successful establishment of schools and colleges. The solidarity of New England society found no parallel in New York. In place thereof, we see various nationalities, many sects, and feudal ranks, all tending to mark off society into distinct classes. In such a population, an immediate erection of a public school system similar to that of Massachusetts was impracticable.²

As the following extracts show, Nicholl's provision for education was in most vague terms, omitting the subject of schools, and not even mentioning instruction in reading. For unruly conduct on the part of the child or servant, the Duke's Laws punished the child, while New Haven and Massachusetts held the master or parent responsible and punished him for the waywardness of his child or servant:

¹ The diversity of sects in New York, and the toleration which followed from that diversity, were not unmixed blessings from the spiritual point of view, as the following quotation shows:

"Every Town ought to have a Minister. New York has first a Chaplain belonging to the Fort of the Church of England; secondly a Dutch Calvinist; thirdly a French Calvinist; fourthly a Dutch Lutheran. . . . Here bee not many of the Church of England; few Roman Catholicks; abundance of Quakers preachers men and Women especially; Singing Quakers; Ranting Quakers; Sabbatarians; Antisabbatarians; Some Anabaptists some Independants; some Jews; in short of all sorts of opinions there are some, and the most part of none at all." Governor Dongan's description in 1686, *N. Y. Col. Doc.*, III. 415.

² The Massachusetts code discusses the subject of education under three heads, "Children and Youth," "College," and "Schools," giving to these titles three pages out of a total of eighty-three. The New Haven code treats of education under the title "Children's Education," taking one page out of a total of fifty; while the Duke's Laws give the matter only one-third of a page in a code comprising sixty-four pages.

Duke's Laws.

"The Constable and Overseers are strictly required frequently to Admonish the Inhabitants of Instructing their Children and Servants in matters of Religion, and the Lawes of the Country, And that the Parents and Masters do bring up their Children and Apprentices in some honest Lawfull Calling Labour or Employment. And if any Children or Servants become rude Stubborne or unruly refusing to hearken to the voice of their Parents or Masters the Constable and Overseers, (where no Justice of Peace shall happen to dwell within ten miles of the said Town or Parish) have power upon the Complaint of their Parents or Masters to call before them Such an Offender, and to Inflict such Corporall punishment as the merrit of their fact in their Judgment shall deserve, not exceeding ten Stripes, provided that such Children and Servants be of Sixteen years of age." *N. Y. Col. Laws*, I. 26.

Massachusetts, 1660.

"Forasmuch as the good education of children is of singular behoofe and benefit to any Common-wealth, and whereas many parents and masters are too indulgent and negligent of their duty in that kind. It is ordered that the Select men of every Town in the several precincts, and quarters where they dwell, shall have a vigilant eye over their brethren and neighbours, to see, first that none of them shall suffer so much barbarism in any of their families, as not to endeavour to teach, by themselves or others, their children and apprentices, so much learning as may enable them perfectly to read the english tongue, and knowledge of the Capital laws: upon penaltie of twenty shillings for each neglect therein. Also that all masters of families, do once a week (at the least) catachise their children and servants in the grounds and principles of Religion, and if any be unable to do so much; that then at the least they procure such children and apprentices, to learn some short orthodox catachism without book, that they may be able to answer unto the questions, that shall be propounded to them, out of such catachism by their parents or masters or any of the Select

New Haven, 1656.

"Whereas too many Parents and Masters, either through an over tender respect to their own occasions, and businesse, or not duly considering the good of their Children, and apprentices, have too much neglected duty in their Education, while they are young, and capable of learning, It is ordered that . . . all parents and Masters, doe duly endeavour, either by their own ability and labour, or by improving such Schoolmaster, or other helps and means, as the Plantation doth afford, or the family may conveniently provide, that all their children, and Apprentices as they grow capable, may through Gods blessing, attain at least so much, as to be able duly to read the Scriptures, and other good and profitable Books in the English tongue, being their native language, and in some competent measure, to understand the main grounds and principles of Christian Religion necessary to salvation. And to give a due Answer to such plain and ordinary Questions, as may . . . be propounded concerning the same . . ."

[If the law be not observed by any parent or master, after three months' warning, a fine of ten shillings to be levied upon him; a

men, when they shall double fine if no im-
call them to a tryall, of provement in three
what they have learned months; and at the end
in this kind. And fur of the third term of
ther that all parents three months, an in-
and masters do breed creased fine may be
and bring up their chil levied or the child
dren and apprentices in taken away from the
some honest Lawfull parent or master.]
calling, labour, or im- *New Haven Colonial*
ployment, either in hus- *Records*, 1653-1665, p.
bandry or some other 583.
trade, profitable for
themselves and the
Common-wealth, if they
will not or cannot train
them up in learning to
fitt them for higher im-
ployments. . ."

[If parents and mas-
ters refuse to obey this
law and to train up
their children and ser-
vants properly, the chil-
dren and servants may
be taken away and given
to those who will more
strictly enforce this law.]
Book of General Laws,
1660, p. 136.

Passing by many minor omissions, we may, in the second place, look at the Dutch customs which were introduced by Nicholls into his code. The most patent feature which the governor was forced to adopt was the Dutch religious toleration. In his instructions,¹ he had been cautioned to respect colonial religion, and in the articles of capitulation at the surrender of New Amsterdam, Nicholls had promised the Dutchmen liberty of worship and church discipline.² Naturally the Duke's Laws, framed as they were for Dutch and English towns on Long Island, took the only practicable position by accepting Dutch toleration and Dutch religious indifference. Uniformity was impracticable in a population made up of Dutch Calvinists, Dutch Lutherans, English Puritans, Baptists and Quakers and many minor sects. Compulsory church attendance was impossible where churches did not exist, and the people were unaccustomed to regular public worship.³ And strict Sabbath observ-

¹ *N. Y. Col. Doc.*, III. 51-61.

² *N. Y. Col. Doc.*, II. 250-253.

³ *N. Y. Col. Laws*, I. 24.

ance could not be had where Puritan asceticism and Calvinist literalism were lacking. We have already seen that the Puritanic legislation of New England was set aside by Nicholls. A single sentence expressed his care for the Sabbath: "Sundays are not to be prophaned by Travellers Labourers or vicious Persons." The Duke's Laws, indeed, had some positive provisions concerning religion, such as for the erection of a church accommodating two hundred persons in each parish, the induction of ministers into office by the governor, and the collection of tithes. But the essential change made by Nicholls was the legalization of all *Protestant* sects and the substitution of such toleration for the compulsory religious uniformity of the Puritan codes.

Another Dutch custom introduced by Nicholls was the practice of plural nomination and partial retirement in public offices. This was a matter much more peculiarly Dutch than was religious toleration, and much less strongly demanded by local conditions; and yet it was applied by the new governor in a number of instances. It has already been noted that Nicholls was ready to adopt this system in New York City,¹ and his liking for it is shown also in the Duke's Laws.

The system of partial retirement, unused in New England, had been customary in New Netherland, although the method was by no means a rigid one.² The Duke's Laws provided for eight overseers (= selectmen) in each town, four of whom should retire each year. From among the retiring four overseers, there should be chosen annually one to hold the office of constable during the ensuing year. This again savored of the Dutch custom, for the towns, both of old and New Netherland, were accustomed to call upon the "old magistrates," as they were named, for advice and assistance to the new. The plan of Nicholls was an improvement upon this system, for it gave to the voters the right of choosing the best one of the four experienced retiring overseers to serve them in the most important town office. Dutch influence was seen also in the manner in which the two churchwardens in each parish were selected by the constable and eight overseers from their own number.³ It is noticeable again in the selection of jurors from among

¹ See *ante*, p. 700.

² See *N. Y. Col. Doc.*, XIV. 314, 344, 412, 473, etc. The Dutch principle is well expressed in the following words: "It is customary in our Fatherland and other well-regulated governments, that annually some change take place in the magistracy, so that some new ones are appointed, and some are continued to inform the newly appointed." *N. Y. Col. Doc.*, XIII. 196.

³ This was soon changed, however, and church affairs placed in the hands of the whole board of constable and overseers, *N. Y. Col. Laws*, I. 78. This method of choosing churchwardens is similar to that of Virginia, where the vestrymen chose the churchwardens from their own number.

the overseers of the towns, for the Dutch custom had often called upon the existing town magistrates or the former magistrates to assist in the administration of justice, although a regular jury system was not established. More particularly, the determination of petty civil cases by arbitrators, which was a prominent part of the Dutch judicial system,¹ was now incorporated by Nicholls into his new code.²

In the selection of sheriff, the Dutch system of plural nomination is also seen, but the method comes nearer to that adopted four years earlier in Maryland,³ and later established in Virginia.⁴ The High Sheriff for Yorkshire, holding office for one year, was to be chosen in rotation from each of the three ridings of the county. The court of sessions of the riding whose turn it was to select the sheriff, presented three names to the governor; and from this triple nomination the governor chose the incumbent for the ensuing year.⁵ This method of election of sheriff, although abolished at an early date in New York, persisted in other parts of the original territory of the Duke of York for one hundred and seventy years, and the principle of plural nominations was transplanted into the territorial policy of the United States.⁶

The town board of the constable and eight overseers was organized after both the New England and the New Netherland practice. Its legislative activity corresponded, in large measure, to the ordinance-power of the New England selectmen; but with one marked difference, which brought the board closer to the Dutch custom. The New England selectmen possessed only such powers in legislation as were delegated to them by the town-meetings, while the Dutch local courts, on the other hand, had possessed local ordinance power aside from the Director and his Council. In this respect, Nicholls copied the Dutch practice; and followed it even further, in making the constable and overseers a judicial body as well. Thus the elective feature of the local boards of the Duke's Laws was English; the extent of their powers was Dutch.

¹ See *Records of New Amsterdam*, *passim*.

² *N. Y. Col. Laws*, I. 7, 32, 63. Compare arbitrators in Providence, *Rhode Island Colonial Records*, I. 27-31.

³ *Archives of Maryland*, Proceedings of Assembly, 1637-1664, pp. 412, 451 (1661 and 1662).

⁴ Hening, *Statutes*, III. 246 (1705); V. 515 (1748).

⁵ *N. Y. Col. Laws*, I. 63.

⁶ See the charter granted by Penn in 1701 to Pennsylvania and the Delaware territories; Pennsylvania constitutions of 1776 and 1790 (in force till 1837); Delaware constitutions of 1776 and 1792 (in force till 1831); Northwest Ordinance of 1787, in the appointment of the council; and the same feature by implication in territorial acts of Indiana, 1800; Mississippi, 1800; Michigan, 1805; and Illinois, 1809.

The parallelism of the Duke's constable and overseers to the Dutch local court is still more noticeable when it is remembered that the ordinances of the town boards under the Laws must be sanctioned by the court of sessions, and that under the Dutch, local by-laws must be approved by the director and council at New Amsterdam. An inspection of some of the town-records shows, in certain cases, a carrying out of the provisions of the Laws, and a total cessation of administrative activity on the part of the town-meetings after the Duke's Laws were promulgated;¹ in other cases, the local board and the town-meeting exercised this power jointly;² and in still other cases, the towns almost ignored Nicholls's efforts to shift power from the town-meetings to the constable and overseers.³ In general, it may be said, that the governor failed in his attempt to crush the town-meetings; and although the towns for a time gave up a part of their activity, they soon, in the struggle for popular representation, regained their old powers, and the town-meeting became as important a factor in the attainment of representative principles during the years from 1668 to 1683, as it was in the similar, though broader, struggle just one hundred years later.

The third class of changes instituted by Nicholls in the New England codes which he had before him, included those of a nature foreign to both the Dutch and New England legislation. In some cases they were taken from the precedents of old England, and in others they were entirely new. Among the more important of the latter features was the compulsory renewal of all former land and town grants, and the surrender of the old deeds and patents. This law not only invalidated all old grants, but as it required new surveys and the payment of fees for the new patents, it became a fruitful source of popular agitation and discontent. Of the English features introduced, the most marked are to be seen in the judicial organization. The English life-holding justices of the peace were appointed; the judicial "ridings," the courts of sessions and of assizes, the high sheriffs and the under-sheriffs, all call up similar English institutions.

¹ See *Easthampton* (Vol. I.) and *Southampton* (Vols. I. and II.) *Town Records*; before 1665 legislative activity of town-meeting had been frequent; between 1665 and 1668 there is scarcely any such action; after the latter date, the meetings again become active.

² In Hempstead the town-meeting and local board exercise concurrent legislative power both before and after the Duke's Laws.

³ In Huntington (*Records*, I.) and Southold (*Records*, I.) the bulk of local legislation is done by the town-meetings; there is very little record of ordinance power of the town board.

The most interesting of all these changes is to be seen in the determination of the suffrage. Since the principle of town and provincial freemanship was set aside by Nicholls, of necessity some other test of the citizen's "evident interest" in the government must be found; and naturally, at that time, the test required was the holding of land. Land was cheap; it was easily attainable; and its possession served better than any twentieth-century qualification, to mark off the socially upright man from the criminal and the vagrant. Nicholls had already proposed one principle in his letter providing for the election of delegates to the Hempstead meeting of 1665, "by the major part of the freemen only, which is to be understood, of all Persons rated according to their Estates, whether English or Dutch;"¹ thus making the payment of taxes on property (not poll-taxes alone), the qualification of voters.

In the Laws, four expressions are used in describing the voting class: "householders," "inhabitants housholders," "freeholders," and "Inhabitants freeholders, Housholders." It is believed that all these phrases refer to the same class of citizens;² and that the words "inhabitants" and "householders" are to be taken not in a substantive, but an adjective sense, qualifying the word "freeholders;" and thus the real definition of the voting class would be *inhabiting and householding freeholders*.³ No statement is made in the Laws of the size of freehold necessary to obtain the suffrage privilege, and perhaps the differences in town settlement and ordinances prevented such a general suffrage qualification. While the practice of the government was not uniform, it usually opposed small freeholds. In

¹ *N. Y. Col. Doc.*, XIV. 564.

² The evidence for this belief is drawn from two sources: (a) the internal evidence of the Laws; and (b) the practice of the towns.

(a) From the Laws. In one place the Laws speak of the election of overseers by the "Housholders," and in another place, by the "freeholders;" and similarly the election of the minister is said to be by "the Inhabitants housholders," and by the "Inhabitants freeholders housholders."

(b) From the town practice. The town records use the words as loosely as do the Laws. For instance in Southampton the phrases occur, "inhabitants or freeholders;" "freeholders;" "freeholders and Inhabitants" (*Records*, II. 279, 295, 305; also I. 135-138 note). In 1672 an election in Hempstead was contested because persons had voted who were freeholders indeed, but held only small tracts, and it was maintained that a man must be not only a freeholder, but a freeholder of a certain number of acres, in order to possess the suffrage (*N. Y. Col. Doc.*, XIV. 667). In 1676, Andros granted a patent to the town officers of Southold, for themselves and "their associats, the freeholders and Inhabitants of the s^d Town" and subsequently these officers state, "All which freeholders we doe fully own . . . to be our onely associats" (*Town Records*, II. 8-12). The last case shows that the town officers believed *inhabitants* to be a qualification of the word *freeholders*; a man must be an inhabitant and a freeholder to be qualified to vote.

³ "He who hath a house in his hands in a town, may be said to be an Inhabitant." *Jacob's Law Dictionary*, London, 1797.

1666 the court of assizes ordered, "Dividing of Towne Lotts, thereby multiplying poor freemen and votes to be rectified by the Sessions :"¹ and in 1680 the governor and council decided that none should have a vote in Flushing unless he possessed a quantity of land equal to that given out in the first town-lot distribution. This decision limited the suffrage to those possessing sixty acres or more in the town.² But this policy was not strictly adhered to, and in another case the decision is in favor of the small freeholder.³ Except in militia elections, where all the soldiers could vote, the possession of land in freehold thus appears to have been required of the voter on local matters, although there was no definite statement of the size of freehold required.⁴

Attention has now been called to the codes from which Nicholls copied, and the changes which he introduced. The code which he framed was drawn from New England, Dutch and English precedents, with some adaptations to the peculiar conditions of Long Island. In political organization, it was much narrower than the New England codes ; since it permitted no popular participation in provincial government, and sought to deprive the town-meetings of their authority. In religious toleration it far outstripped the Puritanic legislation. On the other hand, even the small measure of popular government which the code granted was an advance upon the Dutch local government with its systems of double and triple nomination and close corporations. And thus while the Laws brought increased freedom for the Dutch inhabitants, they diminished the privileges of the English. The Dutch appear contented, but for a

¹ *Report of State Historian*, 1896, 341.

² "Whereas the former Constitution of the s^d Towne, at their first settlement, in the year 1654, was in dividing their home Lotts, into 4 acres a piece, then addi^con of six acres, and after that 50 more to each Inhabitant, None for the future shall be esteemed a Freeman of s^d Towne that hath not sixty acres of land within its limitts, besides meadows, . . . and such as shall have the like propor^con of land and no other to be esteemed Freemen for votes in publick or other town matters."—*N. Y. Col. Doc.*, XIV. 751.

³ *N. Y. Col. Doc.*, XIV. 667.

⁴ Attention has been directed in some detail to the word "inhabitant" as used in the Laws, because its use here is similar to the common acceptance of the word in New York local legislation for over a hundred years. During the eighteenth century, the phrase "freeholder and inhabitant" occurs continuously in the provincial laws with regard to local affairs ; and although the word "freeholder" is very carefully defined by statute (*N. Y. Col. Laws*, I. 112, 244, 405, 453 ; IV. 1094) no definition in all that time has been found for the word "inhabitant." The custom under the Duke's Laws shows that it was there regarded as qualifying the word "freeholder," and it is believed that the same meaning is to be put upon the word through the whole colonial period. If this inference were true, the suffrage for the colonial assembly was based on freeholdership, and a man might vote for representative wherever his land lay ; in local matters, on the other hand, freeholdership and inhabitancy of the locality were both required of the voter.

generation the English struggled for their "birth-right privileges."

Although the military authority of the Duke was soon displaced by the civil organization in New York City and on Long Island, such was not the case in the outlying settlements on the Hudson and Delaware Rivers. Over ten years passed before a permanent civil government was established at those places. After the surrender of New Amsterdam to Nicholls, the latter sent his representative to receive the submission of the several settlements along the Hudson River. No resistance was met with, and the Dutch were promised their civil privileges and the confirmation of their magistrates. At Rensselaerswyck the patroon was granted all the privileges which he had enjoyed under the Dutch.¹ But in spite of promises, the real authority among the up-river settlements came from the military commanders. The local magistrates, indeed, were still retained under the old Dutch name of "commissaries;"² and the old system of double nominations by the court was continued.³ But the military authorities came into conflict with the Dutch citizens, and special commissioners with large powers were sent up the river to investigate the causes of the trouble,⁴ and in 1669 regulated the affairs of the settlements on the Esopus.⁵ These commissioners appointed the local officers, and took steps for the introduction of the Duke's Laws into these settlements.

By degrees the authority was taken from special commissioners and military commanders, and a government established after the form of the Laws, therefore it was "desird a Copy of the Lawes may be sent them."⁶ In April, 1670, the military provisions of the Laws were enforced, the inhabitants were drilled according to the requirements of the Laws, and "all the Lawes relateing to Military Affaires were read to them."⁷ Over a year passed before any further features of the Laws were adopted. In October, 1671, the governor ordered that the towns on the Esopus should follow, in the administration, the rules of the Laws; that a court of sessions should sit semi-annually on the Esopus, and that appeals might be had from it to the court of assizes at New York.⁸ Many English settlers were now entering the Esopus region, and their presence

¹ Munsell, *Annals of Albany*, VII. 97.

² Munsell, *Historical Collections of Albany*, IV. 390-509 *passim*.

³ Munsell, *Annals of Albany*, VI. 20; *N. Y. Col. Doc.*, XIII. 439.

⁴ *N. Y. Col. Doc.*, XIII. 406-415.

⁵ *Ibid.*, 428-431.

⁶ *N. Y. Col. Doc.*, XIII. 438.

⁷ *Ibid.*, 449.

⁸ *Ibid.*, 459-460.

perhaps made possible the definite establishment of the Laws. After particular features of the Laws had been adopted from time to time, the governor and council finally decided, on June 12, 1673, to enforce all the Laws :

“The Petition from severall of the Inhabitants at Esopus being taken into Consideration, wherein they desire to have the Privilege and Benefitt of Enjoyment of the English Lawes Establishd by his Royall Highnesse and in practice almost throughout all his Territoryes. It is Ordered, that the said Lawes shall bee settled and practized in the Three Townes of Esopus as in other Places, for the w^{ch} they shall receive particular Instructions. In the meantime the Inhabit^{ts} of Marbleton and Hurley have Liberty to make choice in each Towne by a double vote of a Constable and Overseers and return their Names unto the Governour, who will out of them pitch upon the Persons to bee confirmed in that Employment for the ensuing years.”¹

It is to be noted that the governor again introduced here the system of double nomination, and in a manner which was not provided for in the Laws.² The contemplated extension of the Laws was interfered with by the re-occupation of the country by the Dutch, but upon the return to the English, Andros was instructed by the Duke to put in force the Laws, except such as he thought inconvenient.³ Accordingly, a few days after his arrival at New York, Andros, by proclamation, declared the Laws in force and directed “All Magistrates and Civill Officers belonging thereunto to be chosen and establishd accordingly.”⁴ From this time, there are no further references to double nominations, and it is believed that the provisions of the Laws were literally carried out.

At about the same time that the demand for the surrender of the Hudson settlements was made, Sir Robert Carre was sent to the Delaware territories to receive their submission. Under him the only blood was shed which accompanied the change from Dutch to English authority ; but at last, on October 1, 1664, six Dutchmen, for themselves and the other inhabitants on the river, signed articles of capitulation, which corresponded in the main to those already given in New York City and the upper Hudson River

¹ *N. Y. Col. Doc.*, XIII. 471.

² The combination of the town government of the Duke's Laws with the double-nomination system of the Dutch, is to be seen also in Harlem. Nicholls granted a qualified town charter to Harlem in 1666, and followed it by a broader grant in 1667. By the charter of 1666, Harlem was granted the “privileges of a Town,” but not with the full measure of local government permitted to the towns on Long Island ; for the constable and overseers were not selected directly by the people, but by the authorities from a double popular nomination. In other respects the town had the privileges of the Long Island towns. See Riker, *History of Harlem*, 239-255.

³ *N. Y. Col. Doc.*, III. 226.

⁴ *Ibid.*, 227.

towns ; and provided for no immediate change in political organization.¹

The Dutch local government continued under these terms, but always in subordination to the military authority of the English commander on the river. By the orders of the governor and council on April 21, 1668, this dual form of government is well illustrated. The civil government in the respective plantations was to be continued until further orders,² but in case of dispute, the military commander was to call to his assistance five named inhabitants to act as counsellors, and this body, in which the commander had a double vote in case of a tie, was to decide civil cases, and give advice concerning the Indian trade and the arming of the several plantations.³ Furthermore, steps were taken, as was being done on the Esopus at the same time, for the introduction of the Duke's Laws :

"the Lawes of the Governmn^t Establisht by his Royall Highnes be shewed and frequently Communicated to the said Councello^rs and all oth^rs To the end that being there wth acquainted *the practise of them may also in Convenient tyme be established.*"⁴

Several years passed by, however, and the change to the Duke's Laws was not made. In 1670 and 1671 we find references to schouts and commissaries, who have the duties of the old Dutch officers.⁵

The adoption of the Laws in the Delaware territories came more gradually and much less completely than it did in the upper Hudson settlements. In June, 1671, the governor granted the petition of the inhabitants of Newcastle for civil officers and town privileges.⁶ In November of the same year the militia provisions of the Laws were extended, and it was ordered that the inhabitants "bee digested into severall Companyes as the Townes and number of Men will permitt," and that the officers be elected by the soldiers and commissioned by the governor.⁷

A further extension of the Laws came in April, 1672, when Captain Walter Wharton was commissioned by Governor Lovelace as justice of the peace on the Delaware. Wharton had the power to nominate by himself, or cause to be elected, a constable and two overseers, with whom he was to hear petty civil cases ; in the decision of which and in all matters of government he was directed

¹ See *ante*, p. 695.

² *N. Y. Col. Doc.*, XII. 461.

³ *Ibid.*, XII. 462.

⁴ *Ibid.*

⁵ Hazard, *Annals of Pennsylvania*, 380, 383.

⁶ *N. Y. Col. Doc.*, XII. 480-482.

⁷ *Ibid.*, 487.

"to follow and observe the Lawes Establish't in his Royall Highness his Territoryes and to follow such Orders and Directions as from time to time hee shall receive from" the governor.¹ By this time there were at least three local courts on the Delaware; the settlements near Cape Henlopen, called the Whorekill plantation, had retained their commissaries and schout since the Dutch period; the Newcastle settlements had likewise their separate court, although under the shadow of the commander's power; and another court for the Schuylkill settlements had existed in 1660;² but no direct evidence remains that this last court continued its sessions under the English. In 1672 there was, however, a court in existence at Upland (Chester), and it is believed that this was only the old Dutch court, with its place of meeting changed some time during the years 1660-1672 from Tinnicum Island near the Schuylkill to the mainland at Upland (Chester).³ In May, 1672, Newcastle was incorporated by the governor, and the Dutch practices of partial retirement and double nomination introduced into the town government.⁴

The few months' occupation by the Dutch in 1673 and 1674 had little effect upon political development on the Delaware. The three courts were continued, and four magistrates for each selected by the governor and council from a double nomination by the "inhabitants."⁵ Upon the restoration of the country to the English, Andros issued orders for the reinstatement of the officers who had held commissions when the Dutch took possession.⁶ The commissaries, or magistrates of each of the local courts, were directed to cause an election of constables.⁷ In the following spring, May, 1675, Andros visited Newcastle and held a special court. And at

¹ *N. Y. Col. Doc.*, XII. 495.

² *Ibid.*, 311.

³ Hazard, *Annals of Penna.*, 398. Upland Court Record, *Memoirs of Hist. Soc. of Penna.*, VII. 31. Mr. Armstrong, the editor of the Record, believes "that the earliest tribunal under English sanction, within the limits of what is now the state of Pennsylvania, held its sittings at Upland, since called Chester." He does not ask the question of the fate of the court at Tinnicum Island, nor whether it persisted under the English, nor whether it were merely moved from Tinnicum to Upland. So far as I know, the documents of the period are silent on this point.

⁴ *N. Y. Col. Doc.*, XII. 496. The officers of the "Balywick" were to be a bailiff (called "a Bailey"), and six assistants. Four of the assistants were to retire annually and others were to be chosen in their stead; the bailiff was to be chosen by the governor from a double nomination made to him. A sheriff was to be appointed for the corporation and the whole river by the governor from a similar nomination. In none of these cases is mention made of the method of election or nomination.

⁵ *N. Y. Col. Doc.*, XII. 508.

⁶ *Ibid.*, 513; the old bailiff, Peter Alricks, was especially excluded from this reinstatement.

⁷ *Ibid.*, 514.

last the final step in the establishment of English laws on the Delaware came in an order from the governor, dated September 22, 1676.

“Whereas upon a petiçon of the Magistrates and officers of New Castle and Delaware River, Governor Lovelace did resolve and in part settle the Establish^t Lawes of this Government and appoint some Magistrates under an English Denominaçon accordingly, In the which their having been an obstruction for reason of the late warres and Change of Government; And findeing now an absolute necessity for the well being of the Inhabitants, to make a speedy settlement, to bee a generall knowne rule unto them for the future, Vpon mature deliberation and advice of my Councell, I have resolved, and by vertue of the Authority derived unto mee, doe hereby in his Ma^{ties} Name Order as followeth.

“1. That the booke of lawes Established by his Royall Highnesse, and practiced in New Yorke, Long Island, and Dependences bee likewise in force, and practiced in this River and Precincts, Except the Constables Courts, Country Rates, and some other things peculiar to Long Island, and the Militia as now Ordered to remaine in the King, but that a Constable in each place bee yearely chosen for the Preservaçon of his Ma^{ties} Peace with all other Power as directed by the law.”¹

The order then went on to recognize three courts, at Whorekill, Newcastle and Upland, to be composed of the justices of the peace, and having criminal jurisdiction, and civil jurisdiction up to the value of twenty pounds; and possessing the power to make by-laws for their respective districts, not repugnant to the laws of the government. A sheriff was to be appointed for the whole Delaware territory. Taxes could be levied, except in extraordinary emergencies, only with the consent of the governor.

The frame of government thus established differed in large measure from that which had been formed for Long Island. No provision is made for town-meetings either by the constable and overseers, or by the inhabitants; and it is certain that no town-meeting, in the New England sense of the term, was ever held by the inhabitants on the Delaware under this order.² The only elective officers provided for were the constables, and in one instance, at least, even the constable was chosen by the court, and not elected by the people.³ The militia officers were not elected by the soldiers, as on Long Island and in New England, but “to remain in the King,” *i. e.*, appointed by the governor. The sheriff was appointed

¹ *N. Y. Col. Doc.*, XII. 561-563.

² E. R. L. Gould, in *Johns Hopkins University Studies in Historical and Political Science*, I. 3 : 27, implies that the New England town system was introduced into Pennsylvania by this order of Andros. There is absolutely no documentary proof for this view, and the facts given above show that the system actually established was widely different from the New England, or even the Long Island custom.

³ Upland Court Record, *Memoirs of Hist. Soc. of Pa.*, VII. 184.

by the governor also ; and the magistrates of the three courts were commissioned by the governor, for "one year . . . or till further order."¹ In actual practice, the magistrates often held their offices for more than a year ; the justices of the Upland court were first commissioned on September 23, 1676, and their commissions were not renewed until June 8, 1680.² In other cases a shorter time passed before renewal.³ As these courts were the local legislature and judiciary, and the sheriff their executive, it will be seen that this system had little of the elective and popular features of the Long Island laws. On Long Island each town had its overseers, exercising local legislative and judicial powers, and elected by the town-meeting ; the constables and other local officers were elected by the same body ; all soldiers had a voice in the election of militia officers ; and the town-meetings, although not authorized by law, actually exercised large legislative powers. Of these various popular features, only the election of the constable was introduced into the Delaware region, and it is doubtful if that election was performed by the inhabitants. All other matters were left to the courts.⁴

The change which was accomplished, then, by the introduction of the Duke's Laws on the Delaware, was very slight. The three courts were maintained and their powers enlarged and more carefully defined. The criminal and civil provisions of the Laws, and the fees there established, were to guide the justices upon the Delaware. But the main political and military features were not extended. No stronger proof of the slightness of the change could be found than the fact that over two years passed before a copy of the Duke's Laws was sent to the Newcastle court, although it had frequently petitioned the governor for a copy.⁵ In course of time, other courts were organized upon the Delaware,⁶ and some efforts were made to establish a general court, perhaps similar to the assizes in New York, which should have legislative and taxing power for all the Delaware settlements, but this plan was not favored by the governor, and during the remainder of the period of the Duke's government, the

¹ *Upland Court Record*, 38.

² *Ibid.*, 37 ; 165.

³ *N. Y. Col. Doc.*, XII. 635 ; *Penna. Archives*, second series, V. 684-685, 690, 699, 704, 706, 718.

⁴ See *Upland Court Record*, p. 184-185, for appointment of overseers of highways by court. Also *N. Y. Col. Doc.*, XII. 606, 650 for two instances of nomination of magistrates.

⁵ *N. Y. Col. Doc.*, XII. 576, 581, 590, 606, 608 ; *Penna. Archives*, second series, V. 697, 706.

⁶ *N. Y. Col. Doc.*, XII. 610, 635 ; Hazard, *Annals*, 472.

separate courts were retained, with no general sessions for the whole territory.¹

It will be seen from these few facts that the political development of the Delaware settlements from the times of the Dutch until the establishment of Penn's and Markham's "frames," was continuous. There was no attempt to force New England customs upon the inhabitants ; and if the effort had been made it could not have succeeded. The English simply continued the local courts of the Dutch, and as the population of the settlements increased, the power and authority of the courts developed. The three divisions of the river settlements appeared at an early period ; they were adopted as the basis for the jurisdiction of the Dutch courts ; and upon them at a later day the county court system and county organization of Pennsylvania were based.

We have now made the circuit of the territories taken by the English from the Dutch, and have noted the manner in which the Dutch and English institutions acted upon each other. We have seen English governors placed over a population made up of Dutch, Swedes and English ; we have watched attempts to transplant New England institutions bodily into New Netherland ; and we have followed English officials, who with definite English political experience in mind, have come into contact with Dutch practices. The outcome is an interesting one, and naturally one which is a resultant of the several forces at work. Dutch, English and New England elements are seen in the result, combined with new features derived from the peculiar conditions of the country. The product is not altogether Dutch nor altogether English, much less is it drawn entirely from New England.

The degree to which the several elements entered into the ultimate constitution was determined, among other causes, by geographical conditions, and principal among these conditions was the grouping of population according to nationalities. English forms and New England practices were introduced first into Long Island, where the population was overwhelmingly English by race and attached to New England by sympathies. In New York City, on the other hand, in spite of a large influx of Englishmen, the Dutch practices of local government, if not the titles of officers, were retained until 1653, and not entirely abandoned after that date. Up the Hudson we have noticed a gradual extension of the English laws, which was accompanied by the entrance of many English settlers into the river lands. On the Delaware, the English institutions were more largely influenced by the Dutch and Swedish cus-

¹ *N. Y. Col. Doc.*, XII. 564, 575, 581, 591.

toms than anywhere else, and here, also, the English settlers, until Penn's day, were fewest in number.

Other conditions, too, prevented the entire establishment of English laws. A town-meeting in New York City, with all its mingled races and languages, would have been an absurdity ; and this cosmopolitan character of the population required a representative or centrally administered municipal government. On the Delaware, where the settlers were scattered over large farms, the town-meeting and town activity were impossible. Again, policy required a toleration of all religions where no one sect was in the ascendancy, and Dutch practice furnished a good precedent for this. Thus, local conditions often forced the adoption of policies variant from Dutch, English or New England practices.

Finally, the Dutch features which were retained for a time, or permanently, may be noted. The Dutch centrally organized provincial government without popular representation was maintained for almost twenty years ; the Dutch principles of double or triple nomination and partial retirement are seen in the county and town government ; the judicial powers of the constable and overseers had a Dutch parallel ; the county system on the Delaware was a development from earlier Dutch customs ; some features of Dutch land-tenure persisted upon the patroon estates ; the exclusive trade-privileges of New York City and its principle of municipal freeman-ship were retained from Dutch days ; and Dutch religious toleration gave a precedent for the later religious freedom, although it must not be taken as the sole cause of that liberty.

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